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ACTION WHA-00

RELEASED IN PART
B1, 1.4(B), 1.4(D), B2

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	CTME-00	DODE-00	DOEE-00	DOTE-00	DS-00	EB-00	FAAE-00
	VCI-00	TEDE-00	INR-00	INSE-00	IO-00	L-00	M-00
	VCIE-00	NRC-00	NSAE-00	ISN-00	NSCE-00	OCS-00	OIC-00
	OMB-00	PA-00	PM-00	PRS-00	P-00	SCT-00	ISNE-00
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C O N F I D E N T I A L OTTAWA 003595

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E.O. 12958: DECL: 12/14/2016
TAGS: PTER, PGOV, PHUM, PINR, PREL, SY, CA
SUBJECT: CANADA: MORE REVIEW OVERSIGHT OVER NATIONAL
SECURITY ACTIVITIES

REF: OTTAWA 02852

Classified By: POLMINCOUNS BRIAN FLORA FOR REASONS 1.4 (b) and (d).

1. (C/NF) SUMMARY and COMMENT: On December 12 Public
Safety Minister Stockwell Day released Part II of the Arar
Commission report with it,s recommendations for enhanced
oversight of Canada,s security and intelligence agencies.

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simultaneous announcement by the Public Safety Minister of an inquiry into the cases of three more dual-citizen Canadians (Abdullah Almalki, Ahmad El Maati, and Muyyed Nurredin) who had been imprisoned in Syria and Egypt, in order to determine if their incarceration and interrogation resulted from actions of Canadian officials. For four and a half years now, the Arar saga has been front page news in Canada. The first Arar Commission report stated it found no evidence of his involvement in terrorist activities.

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END SUMMARY and COMMENT

2. (SBU) The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (Arar Commission) released its second and final report on policy review December 12, entitled: A New Review Mechanism for the RCMP,s National Security Activities. The report recommends the establishment of a pair of review and complaints bodies tasked with monitoring the Royal Canadian Mounted Police (RCMP), the Canadian Security and Intelligence Service (CSIS), and five other agencies involved with national security. One body would be developed from the existing Commission for Public Complaints Against the RCMP and renamed the Independent Complaints and National Security Review Agency (ICRA) to reflect its expanded role. The Canadian Border Services Agency (CBSA) would also fall under the ICRA,s jurisdiction.

3. (SBU) The Security Intelligence Review Committee, which currently oversees CSIS, would be expanded to have similar powers and also to monitor the activities of Citizenship and Immigration Canada, Transport Canada, The Financial Transactions and Report Analysis Centre (FINTRAC), and the Department of Foreign Affairs and International Trade (DFAIT) on national security activities. The additional investigative tools would include the power to subpoena documents and compel testimony from the RCMP and any federal, Qdocuments and compel testimony from the RCMP and any federal, provincial, municipal or private-sector entity or person. The report further recommends establishing a committee to be known as the Integrated National Security Review Coordinating Committee, comprising the chairs of ICRA, the Security Intelligence Review Committee, the Communications Security

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Establishment Commissioner and an outside person to act as Committee chair. This new coordinating committee,s focus would be tasked with ensuring that the statutory gateways among the independent review bodies operate effectively as well as taking steps to avoid duplicative reviews.

4. (SBU) Public Safety Minister Stockwell Day reacted favorably to the recommendations but would not commit to implement them until the Government has had time to review them. In a press release, the Liberals urged the Government to adopt the recommendations immediately. The RCMP released a statement noting that any new review mechanism for its national security activities must be comprehensive enough to ensure public confidence is maintained without compromising the force,s ability to do its job. Post,s law enforcements contacts expressed similar sentiments as well. Any new investigative and oversight bodies, however, will only be as good as the members appointed to them. The recommendation only mentions that appointees should inspire public

confidence and trust in their judgment and experience. The recommendations are listed in paragraph four. The entire 636 page second report can be found at www.ararcommission.ca. The 13 recommendations are listed in paragraph 6 below.

5. (SBU) In a related matter, Day bowed to public and political pressure and established a new inquiry commission into the cases of three Canadian citizens who, like Maher Arar, claimed to have been tortured in Middle East jails. The three men, Abdullah Almalki, Ahmad Abou el Maati, and Muayyed Nureddin are all dual nationals but unlike Arar they were detained while visiting Syria. The inquiry will examine (a) whether the detentions resulted from the actions of Canadian officials, especially in relation to the sharing of information with foreign countries, (b) whether the actions of Canadian officials were deficient; and (c) whether any mistreatment resulted from deficiencies in the actions of Canadian officials. Day appointed Former Supreme Court Justice Frank Iacobucci to chair the inquiry utilizing all steps necessary to ensure that the inquiry is conducted in private. The report is due by January 31, 2008.

6. (U) List of recommendations cited in the Arar Commission Policy Review Report

Recommendation 1: Existing accountability mechanisms for the RCMP's national security activities should be improved by putting in place an independent, arm's-length review and complaints mechanism with enhanced powers.

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Recommendation 2: The review and complaints body should be located within a restructured Commission for Public Complaints Against the RCMP, and be renamed the Independent Complaints and National Security Review Agency (ICRA) for the RCMP to reflect its expanded role.

Recommendation 3: (a) ICRA's mandate should include authority to conduct self-initiated reviews with respect to the RCMP's national security activities, similar to those conducted by the Security Intelligence Review Committee (SIRC) with respect to CSIS, for compliance with law, policies, ministerial directives and international obligations and for standards of propriety expected in Canadian society; (b) ICRA's mandate should include authority to investigate and report on complaints with respect to the RCMP's national security activities made by individual complainants and by third-party groups or individuals; (c) ICRA's mandate should include authority to conduct joint reviews or investigations with SIRC and the Communications Security Establishment (CSE) Commissioner into integrated national security operations involving the RCMP; (d) ICRA's mandate should include authority to conduct reviews or investigations into the national security activities of the RCMP where the Minister of Public Safety so requests;

(e) ICRA's mandate should include authority to conduct reviews or investigations into the activities related to national security of one or more government departments, agencies, employees or contractors, where the Governor in Council so requests and (f) in exercising its mandate with respect to the matters in paragraphs (a) to (d) above, make recommendations to the Minister of Public Safety, and with respect to matters in paragraph (e), to make recommendations to the relevant ministers.

Recommendation 4: (a) ICRA should have extensive investigative powers, similar to those for public inquiries under the Inquiries Act, to allow it to obtain the information and evidence it considers necessary to carry out thorough reviews and investigations; those powers should include the power to subpoena documents and compel testimony from the RCMP and any federal, provincial, municipal or private-sector entity or person; (b) ICRA should have the power to stay an investigation or review because it will interfere with an ongoing criminal investigation or prosecution; (c): ICRA should have the power to conduct public education programs and provide information concerning the review body's role and activities; ICRA should have the

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power to engage in or to commission research on matters affecting the review body.

Recommendations 5: ICRA's complaints process should incorporate the following features: (a) in the first instance, ability on the part of ICRA to refer a complaint to the RCMP for investigation or to investigate the complaint itself, if deemed appropriate; (b) ability on the part of the complainant to request that ICRA review the complaint if the

complainant is not satisfied with the RCMP's investigation and disposition of it; (c): ICRA's complaints process should incorporate an ability on the part of ICRA to dismiss a complaint at any stage of an investigation as trivial, frivolous or vexatious, or made in bad faith; (d) ICRA's complaints process should incorporate the establishment of a program providing opportunities for the use of mediation and informal complaint resolution, except where the complainant does not have the information about the RCMP activities that are relevant to the complaint; (e,) ICRA's complaints process should incorporate opportunity for the Commissioner of the RCMP and affected members of the RCMP to make representations to ICRA and, where a hearing is commenced, to present evidence and be heard personally or through counsel; (f) opportunity for the complainant to make representations to ICRA and to present evidence and be heard personally or through counsel at a hearing; (g) ICRA's complaints process should incorporate open and transparent hearings of a complaint, to the extent possible, but authority for ICRA to conduct all or part of a hearing in private when it deems it necessary to protect national security confidentiality, ongoing police investigations or the identity and safety of sources; (h) ICRA's complaints process should incorporate discretion by ICRA to appoint security-cleared counsel independent of the RCMP and the government to test the need for confidentiality in regard to certain information and to test the information that may not be disclosed to the complainant or the public; and (i) ICRA's complaints process should incorporate the ability for ICRA to seek the opinions or comments of other accountability bodies, such as the Canadian Human Rights Commission, the Privacy Commissioner of Canada and the Information Commissioner of Canada.

Recommendation 6: ICRA should be structured so that complaints and reviews related to the RCMP's national security activities are addressed only by specified members. Appointments of such members should be aimed at inspiring public confidence and trust in their judgment and experience. Appointees should be highly-regarded individuals with a stature similar to SIRC appointees.

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Recommendation 7: CRA should prepare the following reports to the Minister of Public Safety (the Minister) and the Commissioner of the RCMP: (a) Reports arising from self-initiated reviews and investigations of complaints, which should include non-binding findings and recommendations; and (b) Annual reports on its operations to the Minister, who should lay an edited version of the report, omitting national security information, before each House of Parliament. All of the above reports may include confidential information (including information subject to national security confidentiality) and should also include an edited version that ICRA proposes for public release.

Recommendation 8: ICRA should have an adequate budget to fulfill its mandate in relation to the RCMP's national security activities, including for purposes of self-initiated review.

Recommendation 9: There should be independent review, including complaint investigation and self-initiated review, for the national security activities of the Canada Border Services Agency, Citizenship and Immigration Canada, QServices Agency, Citizenship and Immigration Canada, Transport Canada, the Financial Transactions and Reports Analysis Centre of Canada and Foreign Affairs and International Trade Canada.

Recommendation 10: ICRA should review the national security activities of the Canada Border Services Agency, and the Security Intelligence Review Committee should review the national security activities of the other four entities.

Recommendation 11: The government should establish statutory gateways among the national security review bodies, including ICRA, in order to provide for the exchange of information, referral of investigations, conduct of joint investigations and co-ordination in the preparation of reports.

Recommendation 12: The government should establish a committee, to be known as the Integrated National Security Review Coordinating Committee, comprising the chairs of ICRA and the Security Intelligence Review Committee, the Communications Security Establishment Commissioner and an outside person to act as Committee chair. INSRCC would have the following mandate: to ensure that the statutory gateways among the independent review bodies operate effectively; to take steps to avoid duplicative reviews; to provide a centralized intake mechanism for complaints regarding the national security activities of federal

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entities; to report on accountability issues relating to practices and trends in the area of national security in Canada, including the effects of those practices and trends on human rights and freedoms; to conduct public information programs with respect to its mandate, especially the complaint intake aspect; and to initiate discussion for co-operative review with independent review bodies for provincial and municipal police forces involved in national security activities.

Recommendation 13: In five years, the government should appoint an independent person to re-examine the framework for independent review recommended in this Report, in order to determine whether the objectives set out are being achieved and to make recommendations to ensure that the review of national security activities keeps pace with changing circumstances and requirements.



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